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IN THE
Supreme Court of the United States
OCTOBER TERM, 1983

CITY COUNCIL OF AUGUSTA, GEORGIA,
Petitioner,

v.

JIMMY ALLEN ALEWINE, *et al.*,
Respondents.

**PETITION FOR WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT**

BRIEF FOR RESPONDENTS

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SUMMARY OF ARGUMENT

The States and their political subdivisions cannot by purchasing ongoing private transit bus companies and operating them as their own obviate the application of the Fair Labor Standards Act to which the bus companies previously had been subjected.

Transit bus service is not a traditional governmental function for it was only after the infusion of massive amounts of federal money under the Urban Mass Transportation Act of 1964 that the States and municipalities became interested and involved to any significant extent in local mass transit.

ARGUMENT

The underlying issue before this Court does not so much concern Congress's authority to extend it's commerce clause power into areas "heretofore reserved to the States and their political subdivisions" (Petitioner's Brief, pp. 5-6) as it does the power and ability of the States and their political subdivisions to purchase ongoing private businesses, operate them as their own, and obviate any congressional regulation to which those businesses previously had been subjected.

That was the real issue confronting the Eleventh Circuit in the case below, Alewine v. City Council of Augusta, 699 F.2d 1060 (11th Cir. 1983), the Third Circuit in Kramer v. New Castle Area Transportation Authority, 677 F.2d 308 (3rd Cir. 1982), cert. denied ____ U.S.

_____, 103 S. Ct. 786, and this Court in United Transportation Union v. Long Island Railroad Company, 455 U.S. 678, 102 S. Ct. 1349 (1982). Each case concerned the transportation industry with Alewine and Kramer involving transit bus service and Long Island involving passenger railroads. In each instance, the Courts found that the operation of transit bus service and passenger railroads does not alter the historical reality that these services are not among those functions traditionally performed by State and local governments so as to exempt them from federal regulation under National League of Cities v. Usery, 426 U.S. 833, 96 S. Ct. 2465 (1976). Thus, the Courts in Alewine and Kramer held that the Fair Labor Standards Act (FLSA) applies to public employees in municipal mass transit systems. In Long Island, the Court held that the Railway

Labor Act applies to a State owned and operated passenger railroad.

There is no doubt that Congress had authority to extend overtime and minimum wage protection under the FLSA to transit bus employees by the 1966 amendments to the Act. All transit employees, including those of the Augusta Coach Company, became covered by the Act's minimum wage provisions, and all, except operating employees (bus drivers) became entitled to overtime after 40 hours a week.

The City of Augusta purchased the assets of the Augusta Coach Company in 1973 with the FLSA in place and applying to transit bus service. Thus, Congress's extending the FLSA's overtime protection to operating employees of transit bus service was not unusual, unique, or unconstitutional.

As this Court in Long Island correctly noted, the States and their poli-

tical subdivisions cannot by acquiring functions previously performed by the private sector erode federal authority in areas traditionally subject to federal statutory regulation. ____ U.S. ____, 102 S. Ct. at 1355. The Circuit courts in Alewine and Kramer followed this principle and held the FLSA applicable to municipal transit bus service.

Despite Petitioner's contentions, transit bus service is not a traditional governmental function of States and municipalities. In the case of Augusta, had it not been for the initial grant from the Urban Mass Transportation Administration (UMTA), the City would not have purchased the assets of the Augusta Coach Company. 699 F.2d at 1063. Moreover, were it not for the operating grants from UMTA, the City could not afford to operate the local transit system. 699 F.2d at 1063. How can transit

bus service be a "traditional governmental function" if the City of Augusta would not be in the transit bus business were it not for federal grants?

How can transit bus service nationwide be a "traditional governmental function" when it has only been since the enactment of the Urban Mass Transportation Act in 1964, 49 U.S.C. §1601, et seq., and the resulting massive infusion of federal money that States and their political subdivision have become involved to any significant extent in local mass transit?

Local transit bus service is simply not a traditional governmental function.

CONCLUSION

There is simply no reason for this Court to accept the petition for writ of certiorari because the decision of the Court below is correct. The FLSA can be constitutionally applied to

municipal transit bus service and especially to the operating personnel of those systems. Moreover, the operation by States and their political subdivisions of local transit bus service is not a traditional governmental function, the regulation of which would impair their separate and independent existence.

Respectfully submitted,

A handwritten signature in cursive script, reading "Charles L. Wilkinson, III". The signature is written in dark ink and is positioned above a horizontal line.

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